

tion; to attempt to claim the benefit of the irrevocable nature of such an Act of incorporation, by allowing a part of the stock to be held by one or more other persons; and so, under the disguise of being a body politic, to protect himself from a personal responsibility for his debts; and also to prevent the Legislature from altering the Act of incorporation under the notion, the good sense or constitutionality of which I have never been able distinctly to understand, that it was a contract, the obligation of which they could not impair. It has always seemed to me to be very clear, that no enactment of the General Assembly, whatever might be its character, whether considered as a mere law, or as substantially a contract, should be permitted to be made an instrument of fraud; or should have its operation continued in opposition to the interests of the people, as declared by the General Assembly, at the pleasure of any one man or set of men.

The defendants in their answer lay some stress upon the peculiar character of the buildings of the plaintiffs, with which the proposed road is to interfere. Admitting this to be one of those allegations in the answer which must be considered as directly responsive to the bill; yet I do not see how the nature of the buildings, or, in other words the mere amount of the injury likely
447 * to be done, can affect the question of right between these parties. Unless, indeed, the damage should be shown to be so small, as, that the law would take no notice of it; as in actions of waste, where the waste is unimportant in its nature and trivial in amount. *The Governors of Harrow School v. Alderton*, 2 Bos. & Pul. 86; *The Universities of Oxford v. Richardson*, 6 Ves. 706. But these buildings, it must be recollected, have been put up, as is alleged and admitted, for the manufacture of gunpowder; and are more properly suited for that purpose than if they had been constructed of brick, stone, or hard material strongly bound together; in which kind of edifices an explosion would be attended with much more certain and wide-spreading destruction than in lightly framed houses or sheds, such as these are described to be; and therefore they could not be complained of as nuisances by those residing in their vicinity; because of their being too dangerously or improperly constructed for the uses to which they are applied. *Crowder v. Tinkler*, 19 Ves. 626. It is then manifest, that the plaintiffs' cause of complaint cannot, in any sense, be deemed frivolous because of the frail nature of their buildings.

As to the mere facts of this case there is then no substantial difference between the parties. The plaintiffs assert and the defendants admit, that the proposed railroad has been located, and is intended to be constructed over a part of the land of the plaintiffs; and that one of their edifices, erected for the manufactory of gunpowder, is intended to be removed. The distance which the road is to pass over the land of the plaintiffs, and the amount of